

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID H. KNIGHT,  
Plaintiff

v.

BUILDING MATERIALS CORPORATION  
OF AMERICA d/b/a GAF MATERIALS  
CORPORATION and/or BUILDING  
MATERIALS MANUFACTURING  
CORPORATION and JOE RINDERLE,  
Defendants

) CIVIL ACTION

) NO. 03-410 ERIE

) ELECTRONICALLY FILED

**AFFIDAVIT OF JOE RINDERLE**

COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF ERIE )

ss:

Joe Rinderle, being duly sworn according to law, deposes and says:

1. I am the Supervisor of the Shipping Department for GAF Materials Corporation located at 218 West Bayfront Parkway, Erie, PA 16507.

2. I became the Supervisor of the Shipping Department at GAF Materials on or about September 3, 2001. David Knight was one of the leased drivers employed by Transportation Unlimited, Inc. and assigned to the Erie, Pennsylvania facility of GAF Materials. A GAF Materials employee, Ben Clement, was acting as the Supervisor of the Shipping Department before me. Knight has alleged that he was not subject to unlawful discrimination while working with Clement, but was subject to discrimination while working with me from

September 3, 2001 through June 26, 2002, after which Knight was no longer assigned to the GAF Materials facility.

3. I have reviewed the Declaration of David H. Knight and the two pages of handwritten numbers attached to Plaintiff's Response to Defendant's Motion for Summary Judgment. In Paragraph 6 of the Declaration, Knight states that he has reviewed and analyzed the driver logs produced by GAF Materials regarding "loaded miles" (over the road deliveries), that his loaded miles were comparable to the other leased drivers under Clement, but that his loaded miles were reduced and were no longer comparable to the other drivers under me. Two pages of handwritten numbers are provided, but no explanation as to the manner of calculation or source of the numbers is provided, and I am unable to determine from my own review and analysis of the driver logs how they were arrived at.

4. I have reviewed and analyzed the GAF Fleet Weekly Driver's Records ("driver logs") for all four leased drivers from January 1, 2001 through September 2, 2001, during which time Ben Clement was acting as the Supervisor of the Shipping Department. True and accurate copies of these driver logs are attached hereto as Attachment 4. These driver logs were produced in their entirety to David Knight during the course of discovery.

5. I have also reviewed and analyzed the GAF Fleet Weekly Driver's Records for all four leased drivers from September 3, 2001 to June 23, 2002, during which time I was the Supervisor of the Shipping Department. True and accurate copies of these driver logs are attached hereto as Attachment 5. These driver logs were produced in their entirety to David Knight during the course of discovery.

6. As detailed below and in the summary chart entitled "Number of Loaded Miles Under Former Acting Supervisor (1/1/01 - 9/2/01)," attached hereto as Attachment 1, under Ben

Clement, David Knight had the second highest total of loaded miles amongst the four drivers.

Specifically, the number of loaded miles per driver was as follows:

<p style="text-align: center;"><b>NUMBER OF LOADED MILES UNDER FORMER ACTING SUPERVISOR (1/1/01 - 9/2/01)</b></p>
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	<b>DENNIS FORINASH</b>	<b>LAWRENCE MURPHY</b>	<b>DAVID KNIGHT</b>	<b>LEONARD VAN CISE</b>
January 2001	1913	5032	3382	3405
February 2001	1720	5139	4251	3150
March 2001	2604	4744	2526	2292
April 2001	3712	4419	2773	1549
May 2001	3425	3944	2797	535
June 2001	3387	5123	3003	2014
July 2001	3166	3488	1792	1468
August 2001	<u>2569</u>	<u>3395</u>	<u>2663</u>	<u>2071</u>
<b><u>TOTAL:</u></b>	<b>22,496</b>	<b>35,284</b>	<b>23,187</b>	<b>16,484</b>
<b><u>MONTHLY AVERAGE:</u></b>	<b>2812</b>	<b>4410.5</b>	<b>2898.4</b>	<b>2060.5</b>

7. As detailed below and in a second summary chart entitled "Number of Loaded Miles Under Joe Rinderle (9/3/01 - 6/23/02)," also attached hereto as Attachment 1, after I became Supervisor of the Shipping Department, David Knight's loaded miles continued to be the second highest out of the four leased drivers. Specifically, the number of loaded miles per driver was as follows:

<b>NUMBER OF LOADED MILES UNDER JOE RINDERLE (9/3/01 - 6/23/02)</b>
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	<b>DENNIS FORINASH</b>	<b>LAWRENCE MURPHY</b>	<b>DAVID KNIGHT</b>	<b>LEONARD VAN CISE</b>
September 2001	1590	2347	2855	2103
October 2001	3799	1977	1319	1867
November 2001	3133	3359	2403	1922
December 2001	1208	1578	1410	1211
January 2002	1046	2982	1605	778
February 2002	2196	4374	3256	3217
March 2002	540	2832	1958	1971
April 2002	Driver logs from 4/1/02 to 4/28/02 cannot be located. April 2002 is omitted from calculation of average below.			
May 2002	1754	2941	1509	1467
June 2002	<u>1330</u>	<u>1256</u>	<u>848</u>	<u>1145</u>
<b><u>TOTAL:</u></b>	<b>16,596</b>	<b>23,646</b>	<b>17,163</b>	<b>15,681</b>
<b><u>MONTHLY AVERAGE:</u></b>	<b>1844.0</b>	<b>2627.3</b>	<b>1907</b>	<b>1742.3</b>
<b><u>DIFF. FROM FORMER SUPERVISOR:</u></b>	<b>-968</b>	<b>-1783.2</b>	<b>-991.4</b>	<b>-318.2</b>

8. As detailed above and on Attachment 1, all four leased drivers were subject to a reduction of loaded miles after I became the Shipping Department Supervisor. Specifically, the average of loaded miles per month was reduced as follows:

Lawrence Murphy	-1,783.2
David Knight	- 991.4
Dennis Forinash	- 968.0
Leonard Van Cise	- 318.2

9. The driver logs confirm that David Knight was not treated less favorably than the other drivers. Deliveries and shuttles were either assigned by myself, or the drivers occasionally chose their deliveries themselves. Regardless, at no time did I discriminate against David Knight on the basis of his race with regard to delivery assignments.

10. I have reviewed and analyzed the time records for all four leased drivers from weeks ending January 7, 2001 through September 2, 2001, during which time Ben Clement was acting as the Supervisor of the Shipping Department. True and accurate copies of these records are attached hereto as Attachment 6. These records were produced in their entirety to David Knight during the course of discovery.

11. I have also reviewed and analyzed the time records for all four leased drivers from weeks ending September 9, 2001 through June 23, 2002, during which time I was the Supervisor of the Shipping Department. True and accurate copies of these records are attached hereto as Attachment 7. These records were produced in their entirety to David Knight during the course of discovery.

12. All four of the leased drivers were paid by the hour, regardless of whether he was engaged in "loaded miles" (over the road deliveries) or performing local shuttles.

13. A summary chart of the hours worked by all four leased drivers when Ben Clement was acting as the Supervisor of the Shipping Department is attached hereto as Attachment 2 and is entitled "Leased Driver Hours Under Former Acting Supervisor (1/1/01 - 9/2/01)." As detailed therein, under Clement, Knight's average hours were third out of four drivers. The average hours worked per week was as follows:

**LEASED DRIVER HOURS UNDER  
FORMER ACTING SUPERVISOR (1/1/01 - 9/2/01)**

	<b>DENNIS FORINASH</b>	<b>LAWRENCE MURPHY</b>	<b>DAVID KNIGHT</b>	<b>LEONARD VAN CISE</b>
<b><u>TOTAL:</u></b>	<b>2250.5</b>	<b>2501.3</b>	<b>2144.0</b>	<b>2046.5</b>
<b><u>WEEKLY AVERAGE:</u></b>	<b>64.3</b>	<b>71.5</b>	<b>61.3</b>	<b>58.5</b>

(See complete chart of "Leased Driver Hours Under Former Acting Supervisor [1/1/01 - 9/2/01]" attached hereto as Attachment 2).

14. A summary chart of the hours worked by all four leased drivers when I became the Supervisor of the Shipping Department is attached hereto as Attachment 3 and is entitled "Leased Driver Hours Under Joe Rinderle (9/3/01 - 6/23/02)." As detailed therein, under me, Knight's average hours moved up from third to second out of the four drivers. The average hours worked per week was as follows:

**LEASED DRIVER HOURS UNDER  
JOE RINDERLE (9/3/01 - 6/23/02)**

	<b>DENNIS FORINASH</b>	<b>LAWRENCE MURPHY</b>	<b>DAVID KNIGHT</b>	<b>LEONARD VAN CISE</b>
<b><u>TOTAL:</u></b>	<b>2410.0</b>	<b>2661.35</b>	<b>2485.5</b>	<b>2214.55</b>
<b><u>WEEKLY AVERAGE:</u></b>	<b>57.4</b>	<b>63.4</b>	<b>59.2</b>	<b>52.7</b>
<b><u>DIFF. FROM FORMER SUPERVISOR:</u></b>	<b>-6.9</b>	<b>-8.1</b>	<b>-2.1</b>	<b>-5.8</b>

(See complete chart of "Leased Driver Hours Under Joe Rinderle (9/3/01 - 6/23/02)" attached hereto as Attachment 3).

15. As detailed above and on Attachments 2 and 3, during the time I was the Supervisor of the Shipping Department, all the leased drivers' hours were reduced, but Knight's average hours were reduced the least of all four drivers. Specifically, the drivers' average hours per week were reduced as follows:

Lawrence Murphy	- 8.1
Dennis Forinash	- 6.9
Leonard Van Cise	- 5.8
David Knight	- 2.1

(See complete chart of "Leased Driver Hours Under Joe Rinderle (9/3/01 - 6/23/02)" attached hereto as Attachment 3).

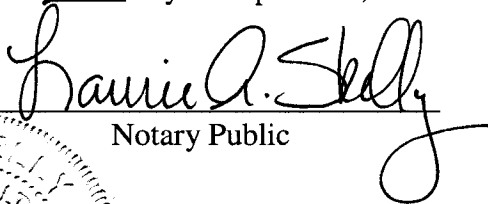
16. The time records, like the driver logs, confirm that David Knight was not treated less favorably than the other drivers after I became the Supervisor of the Shipping Department. At no time did I discriminate against David Knight on the basis of his race with regard to hours.

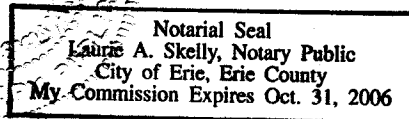
17. David Knight has alleged that on several occasions, Leonard Van Cise, a non-African American leased driver, failed to call in to advise he would not report for work but was not terminated or reassigned. As the Supervisor of the Shipping Department, the leased drivers contacted me when unable to report to work, and I was aware if and when a driver did not report to work. Contrary to Knight's allegation, there was no time when Leonard Van Cise failed to report to work and did not call in to advise that he would not be present and why he would not be present.

18. At no time did I refuse to permit David Knight to take free shingles on the basis of his race.

  
Joe Rinderle

Sworn to and subscribed before me  
this 2<sup>ND</sup> day of September, 2005

  
Notary Public





**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Affidavit of Joe Rinderle was served upon the following counsel for plaintiff David H. Knight, via First-Class United States Mail, this 2nd day of September 2005:

Timothy McNair, Esq.  
821 State Street  
Erie, PA 16501-1316

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s/ Lisa Smith Presta  
Lisa Smith Presta